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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/607,313 06/28/00 BAKER

B 30687-US

EXAMINER

IM22/0720

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ART UNIT

PAPER NUMBER

1761

DATE MAILED:

07/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/607,313

Applicant(s)
Baker

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 24, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

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1. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over the brochure on “Paint Pop”.

The Glynn et al and Mochizuki et al references are withdrawn from the rejection because the claims containing limitations in which the references were relied upon to teach were cancelled the amendment.

2. In the response filed May 24, 2001, applicant argues the Paint Pop product does not have at least three positively claimed elements in claim 27: a paint brush, a can and a lid. This argument is not persuasive. The Paint Pop product displays a similar concept as the claimed product which is to make a product that simulate a paint set which contains edible product. In the Paint Pop product, there is a tray which is made to contain an edible material, a paint roller which has an edible candy portion and an inedible handle portion and an edible powder which is emptied into the tray. The product is consumed by rolling the candy portion in the tray. Applicant's claimed product has the same concept; the two products differ only in the shape. However, applicant is only moving from one conventional design shape to another conventional design shape. A paint tray, a paint can, a paint brush and a paint roller are all conventional shapes. To change from one conventional shape to another conventional shape would have been obvious to one skilled in the art. As to the inclusion of a lid, it would have been obvious to include a lid to prevent the product from falling out and to keep material in the tray clean; this is a notoriously well known concept. For example, when food is kept in a container, it is common to put a lid on the container to keep the food clean and to keep it from falling out. With paint tray, it would

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have been obvious to put a lid to prevent the paint from falling out. Putting a lid on container is a common practice which would have been readily apparent to one skilled in the art. The powder in the Paint Pop product is put into the tray; thus, the tray essentially contains the confection.

Applicant's claim does not exclude the powder package. Applicant further argues the Examiner did not address the packaging. The Paint Pop product as shown in the picture is a package comprising the tray, powder and the paint roller. The roller and the powder are in the tray and is not completely separable from the Paint Pop tray. When the Paint Pop product is put on the market, it would have been obvious to package the product to facilitate the selling of the product to consumers because the tray, the paint roller and powder all go together and they would not be sold separately.

3. Applicant's arguments filed May 24, 2001 have been fully considered but they are not persuasive.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

July 19, 2001


LIEN TRAN
PRIMARY EXAMINER
